UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EVAN A. DAVIS,

Plaintiff,

v.

NEW YORK STATE BOARD OF ELECTIONS; PETER S. KOSINSKI, DOUGLAS A. KELLNER, ANDREW J. SPANO and GREGORY P. PETERSON in their official capacities as Commissioners of the New York State Board of Elections; NEW YORK CITY BOARD OF ELECTIONS; BIANKA PEREZ, FREDERIC M. UMANE, JOSE MIGUEL ARAUJO, JOHN FLATEAU, LISA GREY, MARIA R. GUASTELLA, MICHAEL MICHEL, MICHAEL A. RENDINO, ALAN SCHULKIN and SIMON SHAMOUN in their official capacities as Commissioners of the New York City Board of Elections,

Defendants.

Index No. 16-cv-01750

COMPLAINT

Plaintiff, Evan A. Davis, through his undersigned counsel, Cleary Gottlieb Steen & Hamilton LLP, alleges on the basis of his personal knowledge with respect to himself and the requirements of the provisions of the New York Election Law that are the subject of this Complaint, and on information and belief with respect to all other matters, as follows:

PRELIMINARY STATEMENT

1. This action seeks a declaration that Sections 6-138, 6-140, 6-146 and 7-104 of the New York Election Law (the "Candidate Laws") are unconstitutional and an order permanently enjoining the New York State and New York City Boards of Election from enforcing the Candidate Laws, by requiring that an unaffiliated candidate who is nominated

solely by individual voters and not by any party or political body must nonetheless associate himself or herself on his or her nominating petition, and thus on the election ballot, with a named nominating body and symbol, or, if the candidate does not choose a nominating body and symbol, with the name of a fictitious nominating body and symbol that is chosen for that purpose and imposed on the candidate by the election board.

2. New York's Election Law generally requires that, to appear on the ballot for a statewide office, a candidate who has not been nominated by a major or minor political party[1] must collect a designated number of voter signatures on an independent candidate nominating petition. The Candidate Laws impose the further and altogether bizarre requirement that such an independent candidate petition must include the name and emblem of a nominating body (which name and emblem also must be included beside the candidate's name on the ballot), and that, if the candidate is not associated with such a nominating body and thus does not provide the name and emblem of such a body, the State will provide a fictitious name and emblem of the State's own creation and list the candidate on the ballot with that fictitious name and emblem, thereby imposing upon the candidate an affiliation that he or she did not choose and that does not in reality exist. The Candidate Laws thus prohibit an unaffiliated candidate from truthfully representing himself or herself as a non-partisan candidate who is not the candidate of any party or other political body.

3. Plaintiff Evan A. Davis is a prominent lawyer who has been a public servant and civic activist both nationally and in New York State and New York City for nearly five decades. He wishes to seek election as a Delegate to the New York State Constitutional

[1] Under the New York Election Law a "party" is a political body whose candidate for Governor received more than 50,000 votes in the last gubernatorial election. Other political bodies, whose name will often contain the word "Party" as in "Tea Party" or "Libertarian Party," are independent bodies. Election Law 1-104 (3) and (12). A major political party is either of the two parties receiving the highest number of votes in the last gubernatorial election. 1-104(24).

Convention (a "Delegate") that New York voters will decide in November 2017 whether to call. He wishes as a matter of political belief and conviction to run as an independent non-partisan candidate who is not the candidate of any party or political body. By this Complaint, Mr. Davis challenges the constitutionality of the Candidate Laws on the ground that they violate his rights under the First and Fourteenth Amendments of the U.S. Constitution and under Article 1, §§ 8 and 11, of the New York State Constitution, because they require him, as an unaffiliated candidate for the office of Delegate, to present himself as the nominee of a specified political body and to associate his candidacy with a name and emblem of that body, or to accept an association with a fictitious nominating body imposed upon him by the State. The Candidate Laws also are unconstitutional because they impede New York voters' freedom to elect unaffiliated candidates, and cause voter confusion by requiring that an unaffiliated candidate such as Mr. Davis, who is not the candidate of any party or political body, be portrayed as the candidate of a nominating body that does not in fact exist.

4. Pursuant to Article 19 of the New York State Constitution, the calling of a state Constitutional Convention must be considered by voters statewide every 20 years. This question will next appear on the ballot at the general election in November 2017. Both supporters and opponents of calling a Constitutional Convention have already begun to publicly express their views on this issue.

5. Mr. Davis intends to campaign in favor of calling a Constitutional Convention and, if a Constitutional Convention is called, he intends to seek election as a non-partisan candidate for Delegate who is not the candidate of any party or political body. He believes that the Convention Delegates should include citizens who have been selected other than on the basis of their political affiliation, and that including such non-partisan Delegates will

make the Convention better able to reach decisions based on public, rather than party, interest. He also believes that candidates who are required to be associated with the name and symbol of a nominating body will be seen by voters (and potential petition signers[2]) as either "fringe" party candidates or "single issue" candidates, and that compelling him to be associated with the name and symbol of a nominating body will fundamentally misrepresent the nature of the non-partisan candidacy he seeks to pursue—which is to present himself as a candidate who is well-qualified to address the myriad of issues that may come before a Constitutional Convention. For the reasons stated above, the Candidate Laws make it impossible for Mr. Davis to express and adhere to these beliefs because those laws force him to choose the name and symbol of a nominating political body, or to have a name and symbol chosen for him by the New York City Board of Elections, where he must file his independent nominating petition.

6. The Candidate Laws thus impose a severe burden on the constitutional rights of Mr. Davis and any other non-partisan candidate for Convention Delegate by restricting and/or mandating their exercise of core political speech, in violation of their constitutional rights of free speech and association and their right to be free from government-compelled speech and association. The Candidate Laws also impose unequal burdens on unaffiliated candidates such as Mr. Davis by favoring the political speech of party or political body-nominated candidates, who choose to affiliate with a party or nominating body, over candidates who, as a matter of political conviction and principle, are opposed to being identified as candidates of any nominating body. The Candidate Laws also are overbroad in that they reach beyond candidates who actually have an affiliation as a candidate to impose an affiliation on candidates who do not. In doing so, they will cause Mr. Davis and any other unaffiliated candidates to refrain from constitutionally-protected speech – that is, from presenting themselves as unaffiliated candidates

[2] Independent nominating petitions may be signed by any registered voter in the relevant election district.

for office. Finally, by imposing an association on unaffiliated candidates for Delegate to a Constitutional Convention that misrepresents their unaffiliated status to voters, the Candidate Laws undermine the ability of all New York voters to elect the candidate of their choice based on an informed understanding of candidates' political associations, and will cause voter confusion.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the claims asserted below arising under the U.S. Constitution pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 2201. This Court has supplemental jurisdiction over claims arising under the New York State Constitution pursuant to 28 U.S.C. § 1367.

8. This Court has personal jurisdiction over all Defendants pursuant to Rule 4 of the Federal Rules of Civil Procedure.

9. Venue is proper under 28 U.S.C. § 1391(b), on the grounds that some of the Defendants reside in this District, all of the Defendants reside within New York State, and a substantial part of the events or omissions giving rise to the claims asserted below occurred, or threaten to occur, in this District.

10. In accordance with Rule 4(j)(2) of the Federal Rules of Civil Procedure and Section 307 of New York's Civil Practice Law and Rules, the New York State Attorney General will be served notice of this constitutional challenge.

THE PARTIES

11. Plaintiff Evan A. Davis is a resident of New York State and the City of New York who supports and intends to campaign for the calling of a Constitutional Convention and, if a Constitutional Convention is called, intends to run for election as a Delegate as a non-partisan candidate who is not the candidate of any party or nominating body in the 28th Senate

District, in which he resides. He is not, and does not wish to be associated, as the candidate of any nominating body.

12. Defendant New York State Board of Elections ("State Elections Board") has "jurisdiction of, and [is] responsible for, the execution and enforcement of . . . statutes governing campaigns, elections and related procedures." N.Y. Elec. Law § 3-104(1). The State Elections Board ensures that local boards of elections across the State comply with and implement New York's election laws, including the Candidate Laws. Moreover, the State Elections Board is the body with which the 15 at-large candidates for Delegate, and the candidates for Delegate in Senate Districts covering more than one County, must file their candidate petitions. *Id.* § 6-144.

13. Defendants Peter S. Kosinski, Douglas A. Kellner, Andrew J. Spano and Gregory P. Peterson are Commissioners of the State Elections Board and are sued in their official capacities.

14. Defendant New York City Board of Elections ("NYC Elections Board") is charged with supervising the conduct of official elections held in the City of New York, including receiving and filing the petitions and certificates of nomination or designation for offices to be voted for wholly within New York City, reviewing and determining objections to such petitions, and preparing the official primary and general election ballots for use in the City of New York. The NYC Elections Board is the body with which Mr. Davis must file his candidate petition to qualify to be placed on the ballot as a candidate for Delegate. *See* N.Y. Elec. Law § 6-144. Under Section 6-138(f) of the New York State Election Law, if Mr. Davis does not in his filing select a name and/or emblem for a nominating body, the NYC Elections

Board will itself choose a nominating body name and emblem on his behalf, which will be placed beside Mr. Davis's name on the ballot.

15. Defendants Bianka Perez, Frederic M. Umane, Jose Miguel Araujo, John Flateau, Lisa Grey, Maria R. Guastella, Michael Michel, Michael A. Rendino, Alan Schulkin and Simon Shamoun are Commissioners of the NYC Elections Board and are sued in their official capacities.

CHALLENGED STATUTORY PROVISIONS

16. Section 6-138 of the New York State Election Law, entitled "Independent nominations; rules," specifies rules that govern independent nominating petitions. It requires the State Elections Board or the relevant local board of elections to select a nominating body name and emblem to be associated with a candidate if that candidate does not provide a nominating body name and emblem. Section 6-138 provides in pertinent part as follows:

> 1. Independent nominations for public office shall be made by a petition containing the signatures of registered voters of the political unit for which a nomination is made who are registered to vote. The name of a person signing such a petition for an election for which voters are required to be registered shall not be counted if the name of person who has signed such a petition appears upon another valid and effective petition designating or nominating the same or a different person for the same office.
>
> 2. Except as otherwise provided herein, the form of, and the rules for a nominating petition shall conform to the rules and requirements for designating petitions contained in this article.
>
> 3. a. The name selected for the independent body making the nomination shall be in English characters and shall not include the name or part of the name or an abbreviation of the name or part of the name, nor shall the emblem or name be of such a configuration as to create the possibility of confusion with the emblem or name of a then existing party, or the emblem or name of an independent body selected by a previously filed independent nominating petition for the same office.

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> f. If such a petition shall not show an emblem, or if the petition shall fail to select a name for such independent body, or if pursuant to the provisions of paragraph b or paragraph e of this subdivision, a candidate shall fail to select another emblem or name for such independent body, *the officer or board in whose office the petition is filed shall select an emblem or name or both* to distinguish the candidates nominated thereby. The name and emblem shown upon such petition or selected by a candidate authorized to make such selection by paragraph b or paragraph e of this subdivision, or selected by an officer or board shall also conform to the requirements of this chapter with respect to names or emblems permitted to be selected by a party. (Emphasis added.)

17. Section 6-140 of the New York State Election Law, "Independent nominations; form of petition," specifies the form of an independent nominating petition and requires each signer of the nominating petition to adopt the name and emblem specified in the petition. Section 6-140 reads in pertinent part as follows:

> 1. a. Each sheet of an independent nominating petition shall be signed in ink, shall contain the following information and shall be in substantially the following form:
>
> I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named person (or persons) as a candidate (or as candidates) for election to public office (or public offices) to be voted for at the election to be held on the .... day of ...., 20...., *and that I select the name .... (fill in name) as the name of the independent body making the nomination (or nominations) and .... (fill in emblem) as the emblem of such body.* (Emphasis added)

18. Section 6-146 of the New York State Election Law, "Nomination and designation; declination or acceptance," requires an unaffiliated candidate to accept the nomination of the nominating body. It reads in part as follows:

> 1. A person designated as a candidate for nomination or for party position, or nominated for an office, otherwise than at a primary

> election, may, in a certificate signed and acknowledged by him, and filed as provided in this article, decline the designation or nomination; provided, however, that, if designated or nominated for a public office other than a judicial office by a party of which he is not a duly enrolled member, or if designated or nominated for a public office other than a judicial office by more than one party or independent body or by an independent body alone, such person shall, in a certificate signed and acknowledged by him, and filed as provided in this article, *accept the designation or nomination as a candidate of each such party or independent body* other than that of the party of which he is an enrolled member, *otherwise such designation or nomination shall be null and void.* (Emphasis added)

19. Finally, Section 7-104 of the New York State Election Law, "Ballots; form of, voting machine," mandates that the nominating body's name and emblem appear on the ballot besides the candidate's name.

STATEMENT OF FACTS

A. The Calling of a Constitutional Convention

20. Article 19 of the New York State Constitution mandates that, every 20 years, a statewide vote shall be held on whether to call a Constitutional Convention. The next Constitutional Convention vote will be held in November 2017. If a majority of New York voters vote in favor of holding a Constitutional Convention, an election to select Delegates to the Convention will be held in November 2018, and the Constitutional Convention will begin in April 2019. Three Delegates will be elected in each Senate District, and 15 Delegates will be elected at-large by the voters of the entire State. Any proposed amendment to the New York State Constitution that the Constitutional Convention adopts will then be submitted to New York voters for ratification.

21. New York has held nine Constitutional Conventions, including the Convention of 1777, at which Delegates drafted the first New York State Constitution. The last substantial revision of the New York Constitution as a result of a Constitutional Convention

occurred in 1938. A Constitutional Convention was called in 1965 and held in 1967, but voters rejected that Convention's proposed amendments, which were submitted to them on an "all-or-nothing" basis. New York voters rejected calling a Constitutional Convention in both 1977 and 1997.

22. Press reports indicate that, despite widespread calls for reform in state government, voters opposed a Constitutional Convention in 1997 largely because they feared that political and professional organizations, including the dominant political parties, as well as incumbent politicians, would dominate the selection of Delegates to the Constitutional Convention and the Convention itself, and would propose – and perhaps win ratification of – amendments that served their interests rather than the interests of citizens of the State as a whole. In other words, voters rejected what they saw as a "rigged" process that would be incapable of effecting real change or addressing the perceived problems with state government, and so would not serve the public interest. They did so, at least in part, because they did not believe they would have the ability to elect unaffiliated Delegates who would help bring about meaningful reform.

B. Mr. Davis's Intent to Campaign for a Constitutional Convention and Seek Election as an Unaffiliated Delegate

23. Mr. Davis strongly favors calling a Constitutional Convention and intends to campaign to convince voters to vote in 2017 in favor of such a Constitutional Convention. If a Constitutional Convention is called, Mr. Davis intends to seek election in the 28th Senate District, in which he resides, as a non-partisan candidate for Delegate to the Convention.

24. Mr. Davis has been a public servant and civic activist in New York State and New York City for more nearly five decades. After receiving his undergraduate degree from Harvard College, Mr. Davis earned his law degree from Columbia Law School, where he was

Editor-in-Chief of the Columbia Law Review. During the early 1970s, Mr. Davis served as a member of the legal staff of the Judiciary Committee of the U.S. House of Representatives in connection with the committee's investigation and hearings that led to the impeachment of President Richard M. Nixon. From 1985 to 1991, Mr. Davis served as Counsel to New York State Governor Mario M. Cuomo. In 1998, Mr. Davis ran as a petition candidate for New York State Attorney General seeking the Democratic nomination and imposed on his campaign contribution limits that were a small fraction of those allowed by law. He served as President of the Association of the Bar of the City of New York from May 2000 to May 2002, and as Chairman of the American Bar Association's Standing Committee on Public Education and its Commission on Youth Education for Citizenship. After the terrorist attacks of September 11, 2001, Mr. Davis helped the Association of the Bar of the City of New York, the New York County Lawyers and the State Bar Association coordinate pro bono legal assistance to victims and their families.

25. Mr. Davis also has served as a member of the Committee on Standards of Attorney Conduct of the New York State Bar Association and participated in drafting the Association's new Rules of Professional Conduct. Mr. Davis also has served as Vice Chair of The Trustees of Columbia University, as a director of Episcopal Charities and of the Center for Family Representation, as a Trustee of The Spence School. He also has served as a member of the Advisory Council of New York Common Cause and the Advisory Board of Disability Rights Advocates. He also is the Chancellor of Trinity Church Wall Street. He was recently awarded the New York State Bar Association's highest honor, the Gold Medal Award, on which occasion New York State Bar Association President David P. Miranda said that Mr. Davis "is widely considered one of New York's premier experts on matters of state law and professional ethics."

26. Mr. Davis strongly believes that a Constitutional Convention should be called and that, at such a Convention, the State and its citizens would be best served if a significant number of the Convention Delegates were not the candidates of any party or political body and thus beholden to no party, incumbent office-holders or any pre-determined platform agenda of a party or other political body. Mr. Davis maintains as a core political view the belief that unaffiliated Convention Delegates who do not enter the Convention with partisan positions will be more likely to craft and recommend amendments that will improve the State's governance to the benefit of all New York citizens. He also believes that, given the history of voters rejecting calls for a Constitutional Convention due to fears that special interests will control the Convention, the likelihood of a Convention being convened will depend in large part on voters' knowledge of their right – and their actual ability – to elect unaffiliated, non-partisan Delegates.

27. Based on these political beliefs, Mr. Davis intends to campaign for the calling of a Constitutional Convention by informing voters that they will have an opportunity to elect unaffiliated Delegates. Inherent to this political message is that Delegate candidates, including Mr. Davis, are free to seek election as unaffiliated candidates, without any affiliation with a political group of any kind. That, in turn, necessitates candidates' ability to truthfully represent themselves, both in their candidate petitions and on the ballot, as having no affiliation with a nominating body.

C. The Candidate Laws Require Unaffiliated Candidates to Associate with a Nominating Body

28. In order for Mr. Davis to appear on the ballot for election as a Convention Delegate, the Candidate Laws require him to file a candidate petition with the NYC Elections Board that contains at least 3,000 valid signatures, and to file a certificate accepting the

nomination of a nominating body, even if he is not affiliated with any such body. In the absence of such a body, the Candidate Laws will require him to accept the concoction of such a body by the NYC Elections Board and an indication on the ballot that he is affiliated with that non-existent entity. N.Y. Elec. Law §§ 6-138, 6-142, 6-144, 6-146.

29. Specifically, Section 6-138 of the New York State Election Law sets forth the rules for independent nominations of candidates for public office, and Section 6-140 prescribes the form of an independent nominating petition. As described above, these sections require that independent candidates designate on their nominating petitions the name and emblem of a group of which the candidate is a nominee. Section 6-146 requires a candidate to file a certificate accepting his or her nomination for office by the nominating body. If a candidate fails to provide the name and emblem of a nominating body, the officer or board in whose office the petition is filed is required to select a name and emblem of a nominating body to be included on the nominating petition and for use on the ballot beside the candidate's name. *Id.* §§ 6-138(3)(f), 7-104. For Mr. Davis, the State agency creating this association will be the NYC Elections Board.

30. Thus, the Candidate Laws require an unaffiliated candidate for Convention Delegate such as Mr. Davis to represent himself or herself as the nominee of a specified body, to supply a name and emblem for that body on the candidate petition and for display beside the candidate's name on the ballot, and to file an acceptance of the nomination by that body – even if no such body exists. If an unaffiliated candidate fails to specify an association with a nominating body, the State – in Mr. Davis's case, through the NYC Elections Board – will impose an association by designating a name and emblem of its own creation on that candidate and will insert that name and emblem on the ballot beside the candidate's name. The State will compel

this association even if no such nominating body exists, and despite the fact that the unaffiliated candidate has told voters he or she is not affiliated with any such nominating body.

D. The Candidate Laws Therefore Violate the Constitutional Rights of Mr. Davis, All Other Unaffiliated Statewide Candidates, and New York Voters

31. The circulation of a candidate petition is core political speech that is intimately related to the constitutional rights of political and expressive association. Through this activity, candidates for office communicate their political views to voters, and voters in turn express their support – or lack of support – for such views. Absent the ability to express their political views and chosen associations as they wish, Mr. Davis and other non-partisan candidates are unable to engage freely in this core political speech. As a consequence, voters are stripped of their ability to freely choose a candidate for whom to cast their vote, and will be confused as to the actual affiliation of a candidate who has represented himself or herself as unaffiliated but is then associated with a nominating body on the ballot.

32. The Candidate Laws therefore restrict Mr. Davis's rights to engage in political speech and association by interfering with his ability to run as an independent non-partisan candidate on a platform that is not tied to a particular political body name or symbol, by preventing him from circulating a candidate petition expressing his non-affiliated independence, and by compelling him to engage in political speech that is directly contrary to his strongly-held political views. By mandating that Mr. Davis, as an unaffiliated candidate, either adopt an association with a non-existent nominating body, or have such an association imposed on him by an election board, the Candidate Laws impose a severe burden on his rights to free political speech and free association. They do so by infringing upon Mr. Davis's and every unaffiliated candidate's ability to disseminate their political message and promote their chosen political views. By restricting political speech and association, the Candidate Laws also interfere with the

marketplace of political ideas that the U.S. Constitution and the New York State Constitution are designed to protect, and prohibit unaffiliated candidates from fairly competing with party nominees whose political views happen to comport with the Candidate Laws' mandate that candidates be associated with a nominating body. Further, they violate candidates' and voters' right to be free of government interference and government-compelled speech. These laws force unaffiliated candidates to either refrain from constitutionally-protected speech by preventing them from presenting themselves as unaffiliated and by compelling them to be associated with a nominating body with which they do not actually wish to associate, or to lose the opportunity to seek office by having their candidate petitions rejected for failing to misrepresent a political association that does not exist.

33. As a result, the Candidate Laws cause a direct and immediate injury to Mr. Davis by substantively burdening his ability to convey his message and promote his political views, an ability that bears an intimate relationship to political and expressive association and interactive speech. The hardship caused to Mr. Davis by the Candidate Laws is substantial, as he is required to satisfy ballot access rules that are unconstitutional and are detrimental to his campaign position, and is subject to being compelled by the State to adopt a political association that is directly contrary to his political beliefs.

34. The Candidate Laws, insofar as they severely restrict an individual's preferred means of political communication, have the same effect on other individuals who wish to run as unaffiliated candidates. A candidate's association with a nominating body is a form of political speech, as nominating bodies convey various messages – whether real or perceived – through their stated principles, reputation or name alone. Candidates who desire to associate themselves with a nominating body are able to convey their political message through an

affiliation with the specified body on both the nominating petition and on the ballot. Candidates who desire to present themselves as being wholly unaffiliated and to run on a platform of non-partisanship, however, are restricted from conveying their political message on their petition and on the ballot, because the Candidate Laws force them to pretend to have an affiliation with a group.

35. The Candidate Laws also restrict the ability of all New York voters to elect the candidate of their choice, which includes the right to elect a candidate who chooses not to be affiliated with a nominating body of any kind. They do so by interfering with voters' ability to become informed about the political associations, or lack thereof, of candidates, and by imposing an association on unaffiliated Delegate candidates that misrepresents their unaffiliated status. By imposing an association the candidate does not have, the Candidate Laws force voters who sign a nominating petition in support of an unaffiliated candidate to be bound together after the fact under the name of a nominating body with which neither they nor the candidate actually chose to associate.

36. The Candidate Laws are all the more invidious because, while stripping candidates, petition signers and voters of essential constitutional rights, they fail to advance any compelling State interest. The State can have no legitimate interest in forcing unaffiliated candidates to pretend to have an affiliation. On the other hand, the State does have an interest in fostering the freedoms of speech and association and in avoiding voter confusion and promoting voter independence, and the Candidate Laws run afoul of that interest. If a candidate includes the name and emblem of a nominating body on his or her petition, voters will be misled into believing that the candidate represents or is supported by a larger organization, when in fact the identified "party" is completely fictitious. On the other hand, if the candidate fails to include a

name and emblem on the nominating petition and the State then inserts a nominating body name for the candidate on the ballot, as the law requires, that will confuse voters who believed they were supporting an non-partisan candidate but then found a political body affiliation listed on the ballot beside that candidate's name.

37. The harm these overbroad and unconstitutional laws cause Mr. Davis, other unaffiliated candidates and voters to suffer is clear and present, and not merely speculative. Mr. Davis cannot today urge voters to support the calling of a Convention because they will be able to elect unaffiliated Delegates, because the Candidate Laws prohibit him from presenting himself as such on the ballot, and they restrict his freedom to express his political beliefs and to select his political associations. Mr. Davis and others therefore face actual and imminent injury from the imposition of unconstitutional restrictions on their freedom to engage in core political speech and association, because the Candidate Laws substantially restrict their ability to articulate their political message and regulate interactive political speech and associational activity in a manner that violates their constitutional rights. These restrictions require Mr. Davis and other non-partisan candidates for statewide office to refrain from engaging in constitutionally-protected political speech, which injures them, the voters of New York and the entire democratic process.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

First Amendment: Freedom of Speech and Freedom of Association

38. Plaintiff repeats and realleges the foregoing paragraphs 1 through 37 and incorporates them fully herein.

39. The challenged statutory provisions, insofar as they concern the election of Delegates to a Convention, severely burden Plaintiff's rights under the First Amendment of the U.S. Constitution of free belief, speech, and association and to be free of government-compelled belief, speech and association. Moreover, the restrictions imposed by these statutory provisions serve no compelling State interest in the context of selecting Delegates to a Convention, and are not narrowly tailored to further any State interest.

SECOND CLAIM FOR RELIEF

Fourteenth Amendment: Equal Protection

40. Plaintiff repeats and realleges the foregoing paragraphs 1 though 37 and incorporates them fully herein.

41. The challenged statutory provisions invidiously discriminate between candidates who choose to be nominated as a Delegate to a Convention by a specified body as an expression of their political beliefs, and unaffiliated candidates who, as a matter of political belief and principle, are opposed to being nominated by a nominating body, especially one that does not actually exist. This invidious discrimination violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

THIRD CLAIM FOR RELIEF

New York State Constitution: Freedom of Speech and Freedom of Association

42. Plaintiff repeats and realleges the foregoing paragraphs 1 through 37 and incorporates them fully herein.

43. For the reasons stated in paragraph 39, the challenged statutory provisions violate Plaintiff's rights guaranteed by Article 1, Section 8, of the New York State Constitution to be free in matters of political belief, speech and association.

FOURTH CLAIM FOR RELIEF

New York State Constitution: Equal Protection

44. Plaintiff repeats and realleges the foregoing paragraphs 1 through 37 and incorporates them fully herein.

45. For the reasons stated in paragraph 41, the challenged statutory provisions violate Plaintiff's right to be free of invidious discrimination under Article 1, Section 11, of the New York State Constitution.

PRAYER FOR RELIEF

46. WHEREFORE, Plaintiff respectfully prays that the Court:

a. Declare unconstitutional the challenged statutory provisions, New York Election Law §§ 6-138, 6-140, 6-146, and 7-104, both facially and as applied to Plaintiff;

b. Enter an order preliminarily and permanently enjoining Defendants and each of them, and any person or entity acting in concert with them, from enforcing the challenged statutory provisions against Plaintiff and others similarly situated;

c. Declare that, in any election for Delegate to a Constitutional Convention, candidates who choose not to be nominated by a body, but present the requisite number of valid petition signatures, will be designated on the ballot as "Non-partisan" without any reference to the name or emblem of a nominating body;

d. Enter an order awarding Plaintiff fees and costs allowable under the law, including attorneys' fees pursuant to 42 U.S.C. § 1988; and

e. Enter an order granting Plaintiff such other relief, including damages, as the Court may deem fit.

Dated: New York, New York
March 8, 2016

Respectfully submitted,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

By: ______________________________
Lawrence B. Friedman
A Member of the Firm

One Liberty Plaza
New York, New York 10006
(212) 225-2000

Attorneys for Plaintiff Evan A. Davis